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2 UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 Case No. 08-13555 (JMP)

5

6 | In the Matter of:

7

LEHMAN BROTHERS HOLDINGS, INC., et al.

9

10 | Debtors.

11

13

14 U.S. Bankruptcy Court

15 | One Bowling Green

16 | New York, New York

17

18 | March 31, 2011

19 10:16 AM

20

21 B E F O R E :

22 HON. JAMES M. PECK

23 U. S. BANKRUPTCY JUDGE

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2 HEARING re Motion of BNC Mortgage LLC for Authorization to (i)
3 Enter into Intercompany Services Agreement with Aurora Bank
4 FSB, and (ii) Reimburse Aurora Bank FSB for Certain
5 Administrative Expenses

6

7 HEARING re Debtors' Fifth Omnibus Objection to Claims (Amended
8 and Superseded Claims)

9

10 HEARING re Debtors' Sixth Omnibus Objection to Claims (Amended
11 and Superseded Claims)

12

13 HEARING re Debtors' Thirty-Fifth Omnibus Objection to Claims
14 (Valued Derivative Claims)

15

16 HEARING re Debtors' Seventy-First Omnibus Objection to Claims
17 (Valued Derivative Claims)

18

19 HEARING re Debtors' Seventy-Seventh Omnibus Objection to Claims
20 (Amended and Superseded Claims)

21

22 HEARING re Debtors' Eighty-Fifth Omnibus Objection to Claims
23 (No Liability Claims)

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2 HEARING re Debtors' Eighty-Sixth Omnibus Objection to Claims
3 (No Liability Claims)

4

5 HEARING re Debtors' Eighty-Seventh Omnibus Objection to Claims
6 (No Liability Claims)

7

8 HEARING re Debtors' Eighty-Eighth Omnibus Objection to Claims
9 (No Liability Claims)

10

11 HEARING re Debtors' Eighty-Ninth Omnibus Objection to Claims
12 (No Liability Claims)

13

14 HEARING re Debtors' Ninetieth Omnibus Objection to Claims (No
15 Liability Claims)

16

17 HEARING re Debtors' Ninety-First Omnibus Objection to Claims
18 (to Reclassify Proofs of Claim as Equity Interests)

19

20 HEARING re Debtors' Ninety-Second Omnibus Objection to Claims
21 (No Blocking Number LPS Claims)

22

23 HEARING re Debtors' Ninety-Third Omnibus Objection to Claims
24 (Amended and Superseded Claims)

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2 HEARING re Debtors' Ninety-Fourth Omnibus Objection to Claims
3 (Duplicative of Indenture Trustee Claims)

4

5 HEARING re Debtors' Ninety-Fifth Omnibus Objection to Claims
6 (Valued Derivative Claims)

7

8 HEARING re Debtors' Ninety-Sixth Omnibus Objection to Claims
9 (Duplicative LPS Claims)

10

11 HEARING re Debtor's Ninety-Seventh Omnibus Objection to Claims
12 (Insufficient Documentation)

13

14 HEARING re Debtors' One Hundredth Omnibus Objection to Claims
15 (Settled Derivative Claims)

16

17 HEARING re Debtors' One Hundred First Omnibus Objection to
18 Claims (Settled Derivative Claims)

19

20 HEARING re Debtors' Eighty-First Omnibus Objection to Claims
21 (Duplicative Claims)

22

23 HEARING re Debtors' Eighty-Second Omnibus Objection to Claims
24 (Duplicative of Indenture Trustee Claims)

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2 HEARING re Motion of GLG Credit Fund to Permit it to File a
3 Late Proof of Claim Pursuant to Federal Rule of Bankruptcy
4 Procedure 9006(b)(1)

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25 Transcribed by: Penina Wolicki

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21 SARAH FILBEE, Pro Se

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning.

3 MR. WIN: Good morning, Your Honor. Zaw Win from
4 Weil, Gotshal & Manges for the debtors, Lehman Brothers
5 Holdings, Inc. This is a claims hearing with one claims matter
6 at the top of the agenda. We understand that you have another
7 commitment at 11:30, so we're going to try to make this as
8 quick as possible.

9 THE COURT: Fine.

10 MR. WIN: Starting with the first matter, the motion
11 of BNC Mortgage LLC to enter into a services agreement with
12 Aurora. There were no objections to this motion, but there
13 were a few changes to the services agreement. So we wanted to
14 come down and explain those changes, to the extent that Your
15 Honor had any questions.

16 THE COURT: This was originally listed for the omnibus
17 hearing about a week ago.

18 MR. WIN: That's right. But we didn't have a document
19 signed up at that time. There were still a few moving pieces.
20 So we wanted to pin that down before we got final approval of
21 BNC's entry into that agreement.

22 THE COURT: What are the things you wish to point out?

23 MR. WIN: The most significant is that the payable is
24 now being moved into an Alvarez & Marsal controlled account.
25 So rather than just having it a company payable, BNC will

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1 actually have an account with cash in it, which we think is
2 significant, because as this case moves towards its resolution,
3 we'd like to have that money available for claims or, to the
4 extent that the banks are spun off at some future date, again,
5 it would be better to have that money in an account that's
6 actually controlled by Alvarez. So that's really the only
7 significant change to the agreement.

8 THE COURT: Okay. Are there any issues that the
9 committee has with this?

10 MR. O'DONNELL: No, Your Honor. We're fine with it.

11 THE COURT: Okay. It's approved.

12 MR. WIN: In that case, my colleague Erin Eckols is
13 going to handle the next portion of the claims agenda. May I
14 be excused, Your Honor?

15 THE COURT: You may be excused.

16 MR. WIN: Thank you.

17 MS. ECKOLS: Good morning, Your Honor. Erin Eckols
18 with Weil Gotshal for the debtors. If Your Honor does not have
19 an objection, we were going to take things a little bit out of
20 order today to at least try to minimize the number of changes
21 of people at the podium.

22 THE COURT: Okay.

23 MS. ECKOLS: I will be covering agenda items 2 and 3,
24 6, 7 through 16, 20 and 21. Other members --

25 THE COURT: You're just trying to confuse me, right?

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1 MS. ECKOLS: I -- well, that, of course a
2 consideration. We're really not trying to confuse you. We're
3 just trying to get all the uncontested matters first.

4 THE COURT: Fine.

5 MS. ECKOLS: Then I'll come back for the contested
6 ones. These agenda items consist of three carry-over items
7 from prior omnibus objections and twelve new omnibus
8 objections.

9 Agenda items 2, 3 and 6 are actually all of the same
10 type, so I was going to present them all together, if Your
11 Honor does not --

12 THE COURT: That's fine.

13 MS. ECKOLS: These are all carry-over items from the
14 fifth, sixth and seventy-seventh omnibus objections, which Your
15 Honor previously granted. The fifth, sixth and seventy-seventh
16 omnibus objections seek to disallow and expunge claims that
17 were amended and superseded by other claims filed by the same
18 claimant. There were several outstanding responses to these
19 objections, all of which were filed by the same counsel and on
20 the same basis. Counsel was concerned that if his clients'
21 original claims were expunged, that his clients would lose the
22 causes of actions asserted in those original claims. Put
23 another way, he was concerned that the causes of actions would
24 not carry over to the surviving claims.

25 The parties negotiated and resolved the issue by

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1 adding language to the proposed order specifying that all
2 causes of action included in the original claims will be
3 considered for the surviving claims. Having resolved all
4 outstanding responses to the fifth, sixth and seventy-seventh
5 omnibus objections, the debtors request that the Court grant
6 those omnibus objections as to all remaining claims on them.

7 THE COURT: They're all granted.

8 MS. ECKOLS: Thank you, Your Honor. Moving to agenda
9 item number 7, the eighty-fifth omnibus objection, this
10 objection seeks to disallow and expunge claims that fail to
11 state any factual or legal basis for a claim against the
12 debtors. The claims at issue fail to provide the most basic
13 information required by the Court's bar date order, the
14 information which is necessary for the debtors to have adequate
15 notice of the claims asserted against their estates.

16 No formal responses were received, and accordingly,
17 the debtors respectfully request that the Court grant the
18 eighty-fifth omnibus objection to claims.

19 THE COURT: The eighty-fifth omnibus objection to
20 claims is granted.

21 MS. ECKOLS: Thank you, Your Honor. Agenda items 8
22 through 12 are all of the same type of omnibus objection. And
23 unless Your Honor has an objection, I was going to present them
24 together.

25 THE COURT: That would be fine.

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1 MS. ECKOLS: Agenda items 8 through 12 represent
2 omnibus objections eighty-six through ninety. These omnibus
3 objections seek to disallow and expunge claims for which the
4 debtors have no liability. The claims at issue seek to recover
5 for securities that were neither issued nor guaranteed by the
6 debtors in these Chapter 11 cases. The securities were issued
7 and guaranteed by foreign entities, none of whom are debtors in
8 these proceedings.

9 Thus the claims at issue seek to recover against the
10 debtors for obligations of these nondebtor foreign entities
11 without articulating any basis for doing so. The debtors are
12 proceeding uncontested, as all unresolved responses have been
13 adjourned, and the debtors respectfully request that the Court
14 grant the debtors' eighty-sixth through ninetieth omnibus
15 objections.

16 THE COURT: All of those objections are granted.

17 MS. ECKOLS: Thank you, Your Honor. Agenda item 13,
18 which is the ninety-first omnibus objection. This seeks to
19 reclassify as equity interests proofs of claims that are based
20 on the ownership of stock in the debtors. Stock is an equity
21 security under the Bankruptcy Code, and the holders of the
22 stock claims are equity security holders with interests but not
23 claims against the debtors. The debtors are proceeding
24 uncontested today, and respectfully request that the Court
25 grant the debtors' ninety-first omnibus objection.

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1 THE COURT: The ninety-first omnibus objection is
2 granted.

3 MS. ECKOLS: Thank you, Your Honor. Moving to agenda
4 item number 14, which is the debtors' ninety-second omnibus
5 objection to claims, this objection seeks to disallow and
6 expunge Lehman Program Securities claims that violate the bar
7 date order's requirement that such claims include an electronic
8 reference or blocking number. The debtors have adjourned all
9 unresolved responses, and are proceeding uncontested.
10 Accordingly, the debtors respectfully request that the Court
11 grant the ninety-second omnibus objection.

12 THE COURT: The ninety-second omnibus objection is
13 granted.

14 MS. ECKOLS: Thank you, Your Honor. Agenda item
15 number 15 is the ninety-third omnibus objection. It seeks to
16 disallow and expunge claims that were amended and superseded by
17 subsequently filed claims. No formal responses were received
18 and the debtors are proceeding on an uncontested basis.

19 Certain language in the proposed order has been
20 modified as the result of negotiations with counsel.
21 Specifically, the order has been modified to clarify that the
22 debtors' right to object to the claims designated as surviving
23 claims, is limited to the extent that such claims have been
24 allowed, either by order of this Court or by virtue of
25 settlement agreements that the debtors have been authorized to

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1 enter into.

2 And, Your Honor, if I may approach, I have a red-line
3 copy of the proposed order that reflects the negotiated
4 language.

5 THE COURT: You may approach.

6 (Pause)

7 THE COURT: You're going to have to explain the red-
8 line language on page 3.

9 MS. ECKOLS: Okay.

10 THE COURT: Some of it is bolded and some of it is
11 simply underlined.

12 MS. ECKOLS: It was just the negotiation of counsel
13 that certain language was bolded to make it clear that the
14 claims -- that the debtors --

15 THE COURT: Are you saying that somebody insisted that
16 there be bolding --

17 MS. ECKOLS: Yes.

18 THE COURT: -- of certain of the words? Is that
19 lawyer in the room?

20 MS. ECKOLS: No.

21 THE COURT: And I bet if that lawyer is in the room
22 that lawyer would not want to identify himself or herself.

23 MS. ECKOLS: I would tell you if it was me.

24 THE COURT: Okay. And can you explain to me why this
25 order, in contrast with other orders, includes this language?

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1 MS. ECKOLS: Yes, Your Honor. Certain of the prior
2 orders on the amended and superseded claims do contain some
3 variation of this language. What has occurred is that certain
4 parties entered into settlement agreements with the debtors
5 stating that their claims would be allowed in a certain amount.
6 They then filed amended claims to conform their claim to the
7 amount that was agreed upon, which then results in us having
8 two claims on the claims register.

9 In order to clean that up, we filed these amended and
10 superseded objections. But since the standard language in
11 those orders reserves all the debtors' rights to object to the
12 surviving claim, certain parties have requested carve-outs of
13 those.

14 THE COURT: Okay. Thank you for the explanation.

15 MS. ECKOLS: Your Honor, as we mentioned, the debtors
16 are proceeding uncontested as to this omnibus objection, and
17 respectfully request that the Court grant the ninety-third
18 omnibus objection.

19 THE COURT: The ninety-third omnibus objection is
20 granted.

21 MS. ECKOLS: Thank you, Your Honor. Moving on to
22 agenda item 16, which is the ninety-fourth omnibus objection to
23 claims. The ninety-fourth omnibus objection seeks to disallow
24 and expunge individual noteholder claims that are duplicative
25 of the claims filed by Wilmington Trust and/or Bank of New York

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1 Mellon as indenture trustees for those notes.

2 The debtors received one formal response which has
3 been adjourned to allow the parties to work on a resolution.
4 Accordingly, the debtors respectfully request that the Court
5 grant the ninety-fourth omnibus objection.

6 THE COURT: The ninety-fourth omnibus objection is
7 granted.

8 MS. ECKOLS: Now, Your Honor, at this point, I'm going
9 to skip over agenda items 17 through 19, and move to agenda
10 item number 20 which is the hundredth omnibus objection to
11 claims, which is seeking the modification and allowance of
12 derivative claims for which the parties reached an agreement
13 with respect to the claim amount, classification, and/or debtor
14 entity, that is not reflected on the claimant's proof of claim.

15 This omnibus objection is seeking to modify those
16 claims to conform to the parties' agreement. Accordingly, the
17 debtors respectfully request that the Court grant the hundredth
18 omnibus objection to claims.

19 THE COURT: The hundredth omnibus objection to claims
20 is granted.

21 MS. ECKOLS: Thank you, Your Honor. Moving to agenda
22 item 21, the 101st omnibus objection, this objection seeks the
23 disallowance and expungement of derivative claims that have
24 been settled between the parties, either with a payment to the
25 debtors or with no amounts being due between the parties.

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1 The omnibus objection is seeking to expunge those
2 claims to effectuate the parties' agreement. The debtors are
3 proceeding uncontested, having received no formal responses,
4 and the debtors respectfully request that the Court grant the
5 101st omnibus objection to claims.

6 THE COURT: The 101st omnibus objection to claims is
7 granted.

8 MS. ECKOLS: Thank you, Your Honor. At this point, I
9 will turn the podium over to my colleague, Melissa Colon-
10 Bosolet.

11 THE COURT: Thank you.

12 MS. ECKOLS: Thank you.

13 MS. COLON-BOSOLET: Good morning, Your Honor. Melissa
14 Colon-Bosolet with Weil Gotshal, here on behalf of the debtors
15 as well. I'm going to address agenda item number 4, debtors'
16 thirty-fifth omnibus objection; agenda item number 5, the
17 seventy-first omnibus objection; and later agenda number 17,
18 the debtors' ninety-fifth omnibus objection. All of these are
19 uncontested matters.

20 With respect to the thirty-fifth omnibus objection,
21 since the original claims hearing on October 27th, debtors have
22 successfully settled with an additional counterparty, Global
23 Thematic Opportunities Fund. We respectfully request that Your
24 Honor grant a second supplemental order on the thirty-fifth
25 omnibus, reducing and allow the claims in the settled amounts.

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1 THE COURT: It's granted.

2 MS. COLON-BOSOLET: With respect to the seventy-first
3 omnibus objection, since the original claims hearing on January
4 20th, debtors have successfully settled with three additional
5 counterparties named in the objection: ASA California Tax
6 Advantaged Fund, ASA Tax Advantage Relative Value Fund, and ASA
7 Taxable Relative Value Fund.

8 We respectfully request that Your Honor grant an order
9 on debtors' seventy-first omnibus objection reducing and
10 allowing these three claims in the settled amount.

11 THE COURT: That objection is granted with respect to
12 those parties.

13 MS. COLON-BOSOLET: Thank you, Your Honor. Turning
14 now to the ninety-fifth omnibus objection, the debtors are
15 seeking to reduce and allow twenty-seven claims relating to
16 eleven counterparties. These eleven counterparties failed to
17 file any response to the objection, and debtors seek to reduce
18 and allow these twenty-seven claims on an uncontested basis.

19 There are also nine remaining claims in the ninety-
20 fifth omnibus objection belonging to five various
21 counterparties. These counterparties either filed timely
22 responses to the objection or were granted extensions to the
23 response deadline by the debtors. Settlement discussions have
24 begun with a number of these remaining claimants, and debtors
25 respectfully request that this Court adjourn the hearing as to

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1 these nine claims until the next hearing date on April 28th.

2 THE COURT: That request is granted.

3 MS. COLON-BOSOLET: Thank you, Your Honor. I'm going
4 to turn the podium over, now, to my colleague, Mark Bernstein.

5 MR. BERNSTEIN: Good morning, Your Honor. Mark
6 Bernstein of Weil, Gotshal & Manges on behalf of the Lehman
7 Chapter 11 debtors. I'm going to take you through items number
8 18 and 19 on the agenda.

9 Number 18 is an omnibus -- the ninety-sixth omnibus
10 objection. It relates to duplicative claims filed based on
11 Lehman Program Securities. The Lehman Program Securities were
12 subject to the alternative claims filing procedures that we
13 included in the bar date order. One of the concerns relating
14 to those securities were, who was the proper entity to file
15 claims based on those securities? Was it the beneficial holder
16 or the record holder? Because there was no indenture trustee
17 for those securities.

18 What -- those procedures provided that there was
19 flexibility for who was able to file those claims. And as the
20 result, in many cases, both the record holder and the
21 beneficial holder filed a claim based on the exact same
22 security. This objection is seeking to expunge the claims of
23 the beneficial holder, and leave standing the claims of the
24 record holder for those securities.

25 We did not receive any formal responses to this

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1 objection. We did receive certain informal responses where the
2 beneficial holders requested that they be the surviving
3 claimant and the record holder for those securities agreed to
4 reduce their claim proportionately. And the debtors had no
5 problem with that, and that's been taken care of.

6 There is one clarification to the order, some language
7 that we added to address the concerns of one particular party.
8 I have a black-line, if I can hand it up to Your Honor?

9 THE COURT: Please. Thank you.

10 MR. BERNSTEIN: Something that just makes it clear
11 that this order is not a finding in any way with respect to the
12 relationship between the beneficial holder and the record
13 holder, and whatever relationship they had previously is not
14 affected by this order.

15 Other than that there were no objections, and this is
16 uncontested. And we request Your Honor grant the ninety-sixth
17 omnibus objection.

18 THE COURT: The ninety-sixth omnibus objection to
19 claims is granted.

20 MR. BERNSTEIN: Thank you. The ninety-seventh omnibus
21 objection is an objection to claims that did not include
22 sufficient documentation along with the claim to enable the
23 debtors to evaluate the claims. These claims were filed by
24 parties that purchased residential mortgage loans from the
25 debtors prior to the petition date. And in those loan sale

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1 agreements, there were provisions that provided the debtors
2 would either repurchase or indemnify the holders for losses
3 that they sustained relating to those loans, to the extent
4 there were any breaches or representations by the debtors, with
5 respect to those loans.

6 Since these claims necessarily require a review of
7 each loan and the related breach and the loss that the parties
8 sustained, there is a significant amount of information that's
9 required to fully evaluate these claims. These particular
10 claims that were subject to this omnibus objection did not
11 include any supporting documentation. The debtors, multiple
12 times, have reached out to these parties to attempt to acquire
13 such information. These parties did not -- the parties that
14 are going forward on this date have not responded. For parties
15 that did respond, the debtors have agreed to adjourn the
16 objection in the hopes of the party providing documentation
17 over time; and the debtors are working with those parties.

18 The claims that are going forward here today have not
19 responded. This is uncontested, and we request the Court grant
20 the ninety-seventh omnibus objection.

21 THE COURT: The ninety-seventh omnibus objection is
22 granted on an uncontested basis.

23 MR. BERNSTEIN: Thank you. That concludes the
24 uncontested portion of the agenda. I will turn the podium back
25 over to Erin Eckols to handle the first two contested matters.

1 THE COURT: Okay.

2 MR. BERNSTEIN: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MS. ECKOLS: Your Honor, we have two contested omnibus
5 objection matters on the agenda today. The first one is agenda
6 item 22, which is a carry-over item from the eighty-first
7 omnibus objection, which the Court previously granted.

8 The eighty-first omnibus objection seeks to disallow
9 and expunge claims that are duplicative, either exactly or in
10 substance, of other claims filed by the same claimant on the
11 claims register. Today the debtors are proceeding on an
12 uncontested and contested basis as to this objection.

13 Taking the uncontested portion first, the debtors are
14 proceeding as to East Bay Municipal Utility District's claim
15 32176. East Bay filed a formal response opposing the eighty-
16 first objection, which response has since been resolved. East
17 Bay has withdrawn its opposition to the eighty-first omni, and
18 its notice of withdrawal is docket entry 14624. Accordingly,
19 the debtors respectfully request that the Court grant the
20 eighty-first omnibus objection as to East Bay Municipal Utility
21 District's claim 32176.

22 THE COURT: The eighty-first omnibus objection is
23 granted as to East Bay Municipal.

24 MS. ECKOLS: Thank you, Your Honor. With respect to
25 the contested portion today, the debtors are proceeding as to

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1 claims 45210 and 45211 filed by Ong Stephen Chua and Ong
2 Elizabeth Yutan. The debtors have determined that those two
3 claims are duplicative of claims 42686 and 42688 respectively,
4 filed by the same claimants. The claimants filed a formal
5 response stating that they oppose the objection, but provided
6 no basis other than the belief that their claims are valid.

7 Regardless of whether or not the claims are
8 substantively valid, which is not the issue before the Court
9 today, claims 45210 and 45211 are exact duplicates of claims
10 42686 and 42688. To prevent duplicative recovery and maintain
11 a more accurate claims register, those claims should be
12 disallowed and expunged. Accordingly, the debtors respectfully
13 request that the Court grant the eighty-first omnibus objection
14 as to claims 45210 and 45211.

15 THE COURT: I'm prepared to do that. And I read the
16 response of these objecting parties. Are either of them
17 present in court or on the telephone?

18 Evidently not. These response of Ong Stephen Chua and
19 Ong Elizabeth Yutan does not constitute a sufficient response
20 to the objection, and is overruled. And the eighty-first
21 omnibus objection to claims is granted as to these parties.

22 MS. ECKOLS: Thank you, Your Honor. Moving to agenda
23 item 23, which is a carry-over item from the debtors' eighty-
24 second omnibus objection which Your Honor previously granted at
25 the March 3rd claims hearing. The eighty-second omnibus

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1 objection seeks to disallow and expunge individual noteholder
2 claims that are duplicative of the claims filed by Wilmington
3 Trust Company and/or the Bank of New York Mellon, as indenture
4 trustees, seeking to recover for those same notes.

5 Today we are proceeding as to claim 9187 of William H.
6 Smith and as to claim 9974 of the Francis J. Hill IRA. Mr.
7 Smith and Ms. Hill filed a joint response opposing the eighty-
8 second omnibus objection. In the response Mr. Smith and Ms.
9 Hill do not dispute that they are seeking to recover for the
10 same securities that Bank of New York Mellon, as indenture
11 trustee, is also seeking to recover for under its claim 21803.

12 Specifically, the Smith and Hill claims seek to
13 recover for securities identified with the CUSIP 52520X208,
14 which is the same security that Bank of New York Mellon is
15 seeking to recover for under claim 21803. Accordingly, the
16 Smith and Hill claims are duplicative of claim 21803, filed by
17 the Bank of New York Mellon as indenture trustee, and should be
18 disallowed and expunged on that basis.

19 Accordingly, the debtors respectfully request that the
20 Court grant the eighty-second omnibus objection as to claim
21 9187 of William H. Smith and as to claim 9974 of the Francis J.
22 Hill IRA.

23 THE COURT: Are either of these claimants in court or
24 on the telephone?

25 I hear no response. I read the response and agree

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1 with the characterization of counsel. The response does not
2 constitute a sufficient objection and is overruled. And the
3 debtors' eighty-second omnibus objection to claims is granted
4 as to William Smith and Francis Hill.

5 MS. ECKOLS: Thank you, Your Honor. And with that, I
6 will turn the podium to GLG's counsel to complete today's
7 agenda.

8 MR. JURELLER: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. JURELLER: John Jureller from Klestadt & Winters
11 on behalf of GLG Credit Fund. This is a motion to deem a late
12 filed proof of claim timely filed.

13 This claim arises from a strategic client service
14 agreement between GLG Partners, which is the fund manager for
15 GLG, and LBIE. It actually supplements a previous similar
16 agreement between GLG and LBI.

17 THE COURT: Can I break in and ask you a question?

18 MR. JURELLER: Sure.

19 THE COURT: Which is just purely about scheduling.
20 This matter was originally scheduled for hearing last summer.

21 MR. JURELLER: Last August, correct.

22 THE COURT: And a lot of time has gone by. Why is it
23 being pressed now?

24 MR. JURELLER: The reason why the time has gone by,
25 Your Honor, and it's been on consent of counsel, I actually had

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1 surgery in the fall, and as a result of that, I'm just getting
2 back into the office.

3 THE COURT: Okay. I'm sorry to hear about the
4 surgery. I'm glad you're fine now.

5 MR. JURELLER: Well, hopefully.

6 As I said, this is a -- this claim arises from
7 agreement between GLG and LBIE. And there's a subsequent
8 super-prime agreement between GLG and LBIE as well. Basically,
9 pursuant to the agreement, LBIE handled all of the transactions
10 for GLG: clearing, processing and servicing.

11 Pursuant to section V(1) of the agreement, all
12 securities and funds received by Lehman or an affiliate of
13 Lehman on client's behalf -- client being GLG -- in connection
14 with transactions, will be credited to the account. The
15 account was defined in the agreement as, "client's account
16 maintained by Lehman in its books and records, to record the
17 client's position in the transactions." The transactions
18 included, amongst other things, swap transactions.

19 As a result of this agreement, GLG booked and
20 accounted for all of the transactions through LBIE as going
21 through this particular account, whether or not it went through
22 any of the other affiliates of LBIE as well. The amount at
23 issue here --

24 THE COURT: Let me break in and ask you a question.

25 MR. JURELLER: Sure.

1 THE COURT: Why should that matter in a situation in
2 which your client received notice of a proof of claim bar date
3 obligation that gave your client information on the basis of
4 which, with reasonable reading and diligence, it could have
5 concluded that this was a claim against LBSF?

6 MR. JURELLER: Well, Your Honor, to answer that
7 question. Our client, GLG, who is very active in the LBI
8 bankruptcy, they're one of the main clients --

9 THE COURT: I understand. And so as a result,
10 presumably, they assumed that they didn't have to think as
11 carefully as they actually needed to think about the LBSF
12 bankruptcy case. They perhaps, by their own conduct, assumed
13 that this was an LBIE claim. And it may, in fact, be one that
14 they can pursue at the LBIE level.

15 I'm not sure that their internal assessment of the
16 relationship has much bearing on the question of whether or not
17 there is or is not a good claim to be made now, so many months
18 after the bar date.

19 MR. JURELLER: Well, I'll address that with two
20 different points. Number one, GLG relied upon the agreement
21 that they had with LBIE. This is how everything was booked and
22 the accounting practice went from 2003 forward. In fact, it
23 was actually before that, because they had the agreement with
24 LBI previously. So this is how their accounting practice was
25 set up. Whether it was right or wrong, whether they

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1 interpreted the contract different than Lehman, this is how it
2 was set up internally within GLG.

3 THE COURT: But even in your reply papers, you note
4 that LBIE, for purposes of your understanding, is defined as
5 "Lehman", and there is the ability to transfer within the
6 enterprise from affiliate to affiliate, various assets and
7 liabilities. Wasn't GLG on notice that it needed to do
8 diligence beyond LBIE in order to protect its rights?

9 MR. JURELLER: Well, you know, again, as I said, their
10 understanding was everything was booked through LBIE. And
11 that's how their accounting practice worked. So they never
12 went beyond that. They believed, as part of the service
13 agreement, that they were able to rely on LBIE as being the
14 account, and the LBIE did balance -- effectively balance sheet
15 transactions within the Lehman affiliates. But all that was
16 credited and debited through this particular account.

17 The second point I'm at. The notice that they
18 received governing LBSF having an account listed, I guess, it
19 was on Schedule G. However, in the same vein, LBSF did not
20 list anything under Schedule F for this account. So it kind of
21 shows that LBSF had that same understanding. That's, there was
22 an account there which would have -- an internal account,
23 typically for the swap transactions, because it was collateral.

24 However, there was nothing listed on any of the
25 schedules showing that there was actually money in the account.

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1 And you would assume -- and I think you can assume, and I think
2 it's reasonable -- that because of that, there is no evidence
3 that they should have known that LBSF had it. If LBSF knew we
4 have an account that's holding this collateral for GLG, why was
5 it not listed on the schedules?

6 THE COURT: Wasn't notice of the bar date itself
7 reason for GLG to take a look at this, particularly since there
8 was a reference to Schedule G?

9 MR. JURELLER: Well, I think -- to answer that
10 question. GLG -- and I think you could look at the history of
11 what GLG did in this case. With respect to LBIE, they were
12 seriously involved in the case. They filed a timely claim for
13 the full amount. They believed that everything was with LBIE.
14 And it shows that from their claim.

15 They also filed a timely claim with LBHI for a
16 guarantee of all of these accounts, all of these transactions.
17 It was timely filed. Everything was complied with. Because of
18 that, it's clear that they didn't just ignore the process here.
19 They had hundreds and thousands of transactions through Lehman
20 Brothers. They thought that these transactions went through
21 LBIE and that's where they were accounted.

22 THE COURT: So they made a mistake?

23 MR. JURELLER: I think they made a reasonable
24 assumption based upon the contract between the parties which
25 lists an account for all transactions for Lehman and its

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1 affiliates. And I think they could have made a reasonable
2 assumption based upon the fact that LBSF did not list that
3 account as being a creditor.

4 THE COURT: So they're asserting this claim currently
5 against LBIE?

6 MR. JURELLER: The claim has been asserted as of LBIE
7 right now, yes. This claim against LBSF, if this is truly
8 where the funds are held, is, I guess you could say,
9 precautionary. And that's an issue that we think should be
10 dealt with at the claims objection period, rather than not
11 allowing the proof of claim at this point.

12 THE COURT: Okay. I understand your position.

13 MR. JURELLER: Thank you, Your Honor.

14 MR. BERNSTEIN: Your Honor, Mark Bernstein, again,
15 from Weil, on behalf of Lehman.

16 Your Honor put your finger on the exact right issue
17 here, which is the fact that regardless of whether Lehman or
18 LBIE complied with the provisions of the agreement that they
19 had with GLG -- and I think that there is -- as you noted,
20 there is language in there that says affiliates of LBIE would
21 be performing services on behalf of GLG and did perform
22 services. But regardless of that fact, GLG was given notice
23 twice that LBSF was holding cash on behalf of GLG: once in a
24 statement received six days before the bar date, giving them
25 the amount of such cash and then the interest accrual; and then

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1 again when we provided notice of the bar date order, they were
2 listed on Schedule G.

3 And I'm not exactly sure I followed Mr. Jureller's
4 point. They were listed as having an account at LBSF. We
5 didn't list the amount in the account, but having being listed
6 on the schedules of liabilities, should -- certainly gave GLG
7 enough of actual notice that they might want to pursue or at
8 least investigate whether or not they had a claim against LBSF.

9 GLG is trying to shoehorn their argument into the late
10 claims that had previously been allowed in this case where the
11 Court found it was not entirely within the control of the
12 movants, but rather they were confused by the bar date order.
13 Here, there's no argument that GLG was not solely in control
14 and caused their own failure to file the late claim.

15 They had notice of the account. They had notice of
16 the bar date. The bar date was more than a year after the
17 commencement of the case. GLG is a sophisticated party. They
18 were involved in the Lehman cases. Because of their
19 intertwined relationship with Lehman, I would think that should
20 have given them more reason to investigate where their cash and
21 where their collateral was being held rather than less of a
22 reason or a cause of confusion.

23 This Court and the Second Circuit has taken a hard-
24 line approach in applying the Pioneer factors, finding that the
25 reason for the delay is the most important factor. The reason

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1 for delay here is GLG made a mistake. They did -- they missed
2 the bar date. They didn't investigate their claims as they
3 have a duty to do. And therefore, they are at fault for the
4 filing of the late claim.

5 Their late claim was filed nine months after the bar
6 date, not merely a couple days, which is a significant delay.
7 And even in the context of these cases, the debtors are already
8 negotiating plans and disclosure statements. The plan is a --
9 includes various complex compromises. And an increase of
10 claims at this point, certainly could prejudice those
11 negotiations and the estimated distribution to various parties.

12 In this Court's prior opinion, as well, the Court
13 noted that it is -- it would be prejudicial at this point to
14 have an additional influx of claims, and a strict application
15 of the bar date order is necessary to manage the enormous
16 claims process that the debtors have to undergo here. For
17 those reasons, we don't think GLG has satisfied the burden,
18 which is theirs, of establishing excusable neglect in this
19 case, and their motion should be denied.

20 THE COURT: All right. Thank you. I'll hear from the
21 committee, and then I want to give Mr. Jureller an opportunity
22 to respond.

23 MR. O'DONNELL: Okay, Your Honor. Dennis O'Donnell;
24 Milbank, Tweed, Hadley & McCloy on behalf of the official
25 committee.

1 Your Honor we filed a joinder in the debtors'
2 objection, largely for all the reasons just articulated by Mr.
3 Bernstein. The one fact here that's most telling is that GLG
4 is not able to deny that it received the account statement, it
5 received the other information. It attempts to argue around it
6 in terms of the argument based on the contract. But the
7 contract, whatever the contract said, they had the documents
8 and they were on notice.

9 And given everything they also say in the reply about
10 the nature of their relationship with Lehman and how things
11 moved back and forth within Lehman, they were on notice and
12 should have -- I think the only proof, of course, here, would
13 have been to file proofs of claim against any Lehman entity
14 with whom they had had dealings in the past. And they failed
15 to do that. And I don't think they did what they needed to do
16 to satisfy the excusable neglect standard. Thank you.

17 THE COURT: Okay. Mr. Jureller, you can respond to
18 what you've heard. But I also have a question for you --

19 MR. JURELLER: Sure.

20 THE COURT: -- about a statement that was made at the
21 conclusion of your reply which I read as a, if all else fails,
22 we have a litigation option and might bring a declaratory
23 judgment action. Did I read that correctly?

24 MR. JURELLER: I think it was a reservation of rights,
25 Your Honor, is what it was meant to be, because the funds that

1 **were being held --**

2 THE COURT: Well, I read it as, if I lose this, I'm
3 going to bring a claim of some sort in a different forum.

4 MR. JURELLER: No, it wasn't meant to be that way. It
5 was meant to be a reservation of rights that we may have that
6 option to bring a claim, because this was collateral. And
7 whether or not Lehman had title to those funds, because they
8 were being held pursuant to the agreement on behalf of GLG, it
9 was a reservation of right as to that point.

10 THE COURT: Okay.

11 MR. JURELLER: Just to address a couple of the points
12 that were brought up here. One regarding the notice from
13 Schedule G, and just a point of -- a clarification on that.
14 The LBSF transactions with GLG were derivative swap
15 transactions. And each of those derivative swap transactions
16 were terminated and closed out more than a year before the
17 bankruptcy. So there were no other transactions going on
18 between GLG and LBSF, such that they would think that there
19 would be funds or some sort of claim, related to LBSF. That's
20 one point.

21 THE COURT: Isn't that speculation, though, on your
22 part? You're saying because there were no current
23 transactions, and the cash that is at issue here at LBSF
24 resulted from transactions from the year before the bankruptcy,
25 that they would make certain assumptions that there was no

1 claim notwithstanding having received actual notice?

2 MR. JURELLER: Well, I think that --

3 THE COURT: The actual notice problem here is a real
4 issue for you to get around. Because if they had simply read
5 the papers, they'd see that there was a potential to bring a
6 claim against LBSF, regardless of when the claim arose.

7 MR. JURELLER: Well, I think the question is whether
8 or not, looking at the full circumstance of the situation,
9 whether or not it would be reasonable for them to assume that
10 based upon their understanding since 2003, the way that they
11 worked with LBIE, that once those credit default swap
12 transactions with LBSF were finished and terminated, that the
13 collateral would be recrated and debited on these balance
14 sheet transactions and transfers within Lehman. That was the
15 type of agreement that they had there, and that's why they --
16 you know, everything went through this particular account.
17 Lehman was handling it.

18 THE COURT: That's why they assumed that they could
19 reliably pursue their claims directly against LBIE. But that
20 doesn't mean that it was correct for them, given the free flow
21 of funds throughout the Lehman empire, to disregard the
22 potential for claims here. In fact, your having filed a
23 protective proof of claim on the guarantee against LBHI
24 demonstrates that there was at least a recognition that there
25 were claims to be pursued and protected here by a certain

1 deadline.

2 MR. JURELLER: That's correct regarding LBHI.

3 THE COURT: Right.

4 MR. JURELLER: You know, I think that goes to show
5 that these -- that GLG was on top of it.

6 THE COURT: They were on top of it --

7 MR. JURELLER: But if they would have thought that
8 there was a claim --

9 THE COURT: They were on top of it, but they made a
10 grave mistake.

11 MR. JURELLER: But they made a grave mistake based
12 upon the reasonable reading of the agreement that they've had
13 in place for five years prior to that day. And they
14 understood, and they've always booked it through -- as coming
15 through LBIE, whether there is collateral put to LBSF, whether
16 there were transactions with LCPI. Everything went through
17 LBIE. That was the relationship they had with them.

18 It was this super-prime relationship that the debtors
19 set forth in their opposition paper where it was this all-
20 encompassing agreement that basically they did everything for
21 GLG, when GLG did transactions. They moved the money the way
22 that it was supposed to be moved, and it came back the way it
23 was supposed to be --

24 THE COURT: But, Mr. Jureller, they actually turn that
25 against you by arguing that because of the so-called super-

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1 prime relationship that you had and your knowledge of the way
2 transactions worked with LBIE and its affiliates, that you
3 should have exercised -- your clients should have exercised
4 greater diligence at the time proofs of claim were due. What's
5 your response to that?

6 MR. JURELLER: That's their argument, of course.

7 THE COURT: That's right. And what's your argument in
8 response to that?

9 MR. JURELLER: My argument in response to that is that
10 basically what they relied upon is the agreement that they had
11 in place and the ongoing relationship that they had with LBIE,
12 and that this is how their accounting practice worked for a
13 substantial period of time prior to the bankruptcy.

14 THE COURT: Okay.

15 MR. JURELLER: And I'd just address one other point
16 too. If we get to that point -- is whether or not this opens
17 up the proverbial can of worms to other claims being filed. I
18 think this is a little bit different --

19 THE COURT: I think it's the -- it's not the can of
20 worms, it's the Pandora's box.

21 MR. JURELLER: Pandora's box. There you go. Thank
22 you for that. I think this case is sufficiently different than
23 all of the other cases that have come before you to file late
24 proofs of claims. This is based upon a very close relationship
25 with the debtor, an agreement that's in place, contract

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1 interpretation and whether or not the accounting system and the
2 accounting practices of GLG as compared to Lehman were
3 adequate. And that may be -- a better place for that would be
4 a claims objection rather than to decline a claim for
5 collateral at this point in time. I have nothing further.

6 THE COURT: Okay. Thank you. Anything more from any
7 party?

8 I've reviewed with some care the papers that were
9 filed by GLG Credit Fund and the papers filed in opposition by
10 the debtors as well as the joinder of the creditors' committee.
11 And I've considered the argument.

12 This is really one of the easier motions for me to
13 deny, particularly in light of the decision that I issued last
14 year in connection with a number of late-filed claims. That
15 decision, incidentally, was appealed by one of the aggrieved
16 parties to the district court; and Judge Pauley, within the
17 last several months affirmed my decision. So we now have both
18 a bankruptcy court decision and a district court decision
19 recognizing the validity of the hard-line approach being
20 applied, particularly in the context of the Lehman case.

21 GLG loses here principally because they had actual
22 notice of the ability to file a claim against LBSF and did not
23 do so by the bar date. And their conduct demonstrates an
24 awareness of the complexity of the relationship that they had
25 with LBIE, the fact that LBIE would be doing business not only

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1 directly with GLG, but through affiliates of LBIE. And there
2 really is no good excuse for having failed to satisfy the
3 requirements of the bar date other than what is alleged to be
4 reliance upon a certain accounting practice of GLG, and what I
5 take to be their assumption that they were dealing primarily,
6 if not exclusively, with LBIE. The language of the agreement
7 says otherwise by noting that LBIE had the ability to transfer
8 assets and liabilities to affiliates.

9 It is really the actual notice problem that is the
10 greatest problem for this late-filed claim. And to the extent
11 there are reserved rights for GLG to pursue other procedural
12 remedies here, certainly those rights exist. But as to this
13 motion for leave to file a late claim, that motion is denied,
14 substantially for the reasons stated in my earlier opinion.
15 I'll entertain an order.

16 Is there anything more for the current hearing?

17 MR. BERNSTEIN: No, Your Honor. That concludes our
18 agenda for this morning.

19 THE COURT: All right. We'll adjourn the Lehman
20 hearing.

21 (Whereupon these proceedings were concluded at 11:00 AM)

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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7 **Penina**
8 **Wolicki**

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